



Montana Legislative History

Chapter: 313 Session L: 1979

Bill Number: 432 **Senate**

Checklist of Bill History

History and Final Status Sheet

Introduced Bill X

Fiscal Note N/A

Third Reading Bill X

Final Version of Bill X

House

Committee:
Judiciary

Hearing Date(s):

March 7, 1979

March 8, 1979

Executive Action

Senate

Committee: Judiciary

Hearing Date(s): February 17, 1979

Conference Committee

Hearing Date(s): n/a

Conference Committee Report:

Compiler Notes

Compiled by:

Date:

Notes:

SENATE BILL NO. 432

INTRODUCED BY HAFFERMAN, BOYLAN, MEHRENS

IN THE SENATE

February 10, 1979	Introduced and referred to Committee on Judiciary.
February 13, 1979	Fiscal note requested.
February 16, 1979	Fiscal note returned.
February 17, 1979	Committee recommend bill do pass. Report adopted.
February 19, 1979	Printed and placed on members' desks.
February 20, 1979	Second reading, do pass.
February 21, 1979	Considered correctly engrossed.
February 22, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 8, 1979	Committee recommend bill be concurred in. Report adopted.
March 12, 1979	Second reading, concurred in.
March 15, 1979	Third reading, concurred in.

IN THE SENATE

March 16, 1979	Returned from second house. Concurred in. Sent to enrolling. Reported correctly enrolled.
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1 *Sen. Smith* BILL NO. *432*
 2 INTRODUCED BY *Hoffman Boyle Nelson*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW
 5 RELATING TO ATTENDANCE OF TRIAL JURIES IN DISTRICT COURT;
 6 AMENDING SECTIONS 3-15-401, 3-15-411, 3-15-501, 3-15-503,
 7 3-15-505, AND 3-15-506, MCA."

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 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 3-15-401, MCA, is amended to read:

11 "3-15-401. Jury lists -- by whom and when made. The
 12 chairman or, in his absence, any member of the board of
 13 county commissioners, ~~the county treasurer,~~ and the county
 14 ~~assessor--or--any two of such officers~~ clerk and recorder of
 15 each county must meet at the county seat of each county at
 16 the office of the county clerk and recorder on the second
 17 Monday of December of each year for the purpose of making a
 18 list of persons to serve as trial jurors for the ensuing
 19 year. If they fail to meet on the day specified in this
 20 section, they must meet as soon thereafter as practicable."

21 Section 2. Section 3-15-411, MCA, is amended to read:

22 "3-15-411. Term of service of jurors. (1) The persons
 23 whose names are so returned are known as regular jurors and
 24 must serve for 1 year and until other persons are selected
 25 and returned unless they are excused by the court or a judge

1 pursuant to 3-15-501.

2 (2) If jurors are drawn before the selection and
 3 return of the new jury list as provided in this part and
 4 thereafter a new jury list is returned, they shall continue
 5 to serve as jurors, if the business of the court requires
 6 the attendance of a jury, for a period not exceeding 90
 7 days.

8 (3) Notwithstanding such limitation of service, a jury
 9 composed of such jurors duly impaneled to try any cause
 10 shall continue to serve in such cause until discharged by
 11 the court from any further consideration of such cause. The
 12 fact that a new jury list has been returned shall not affect
 13 their status as jurors."

14 Section 3. Section 3-15-501, MCA, is amended to read:

15 "3-15-501. Order directing that trial jury be drawn
 16 and summoned. (1) At least once each year in each county,
 17 when a civil or criminal case has been at issue and ready
 18 for trial for more than 6 months and the plaintiff or
 19 defendant in such case has requested a jury trial or
 20 whenever the business of a district court requires the
 21 attendance of a trial jury for the trial of civil or
 22 criminal cases and no jury is in attendance, the court must
 23 make an order directing a trial jury to be drawn and
 24 summoned to attend before said court. Such order must
 25 specify the number of jurors to be drawn and the time at

1 which the jurors are required to attend, which time may be
2 at the same term in which the jurors are drawn or at the
3 next succeeding term, in the discretion of the court.

4 (2) The court may direct that such causes, either
5 criminal or civil, in which a jury may be required or in
6 which a jury may have been demanded be continued and fixed
7 for trial when a jury shall be in attendance.

8 (3) A district court may draw more than one trial jury
9 in a given year if, in the opinion of the judge or judges
10 thereof, the service of the trial jury in attendance has
11 been unduly demanding, and in such case the trial jury in
12 attendance may be excused by the court from further jury
13 duty in that year.

14 (4) The judge or judges of a district or the judge of
15 a department may designate that jury service in his or their
16 district or department is on a "one-day or one-trial" basis;
17 that is, each individual juror is excused for the rest of
18 the year after having attended for 1 day and not having been
19 selected to serve at the trial of a particular cause or
20 after having completed service at such a trial.

21 (5) If the number of unexcused jurors is not
22 sufficient to meet current requirements at any time, jurors
23 excused under subsection (3) or (4) may be required to
24 serve."

25 Section 4. Section 3-15-503, MCA, is amended to read:

1 "3-15-503. Drawing -- how conducted. (1) The clerk
2 shall place the box on a rod so that it may readily revolve.
3 The box must be revolved a sufficient number of times to
4 ensure that the numbered slips in it become thoroughly
5 mixed. Thereafter the judge shall draw from the box, one at
6 a time, as many of the numbered slips as are ordered by the
7 court.

8 (2) A record of the drawing shall be entered in the
9 minutes of the court. It must show the names of the jurors
10 corresponding to the numbers drawn from the jury box.

11 (3) If the court is satisfied that any person whose
12 name is drawn is deceased or mentally incompetent or has
13 permanently moved from the county, the name of the person
14 shall be omitted from the list and another name shall be
15 drawn in its place. The reason for the omission shall be
16 entered upon the minutes of the court. The same procedure
17 shall be followed as often as may be necessary, until the
18 number of names of jurors required has been drawn.

19 ~~(4) After the drawing has been completed, the clerk~~
20 ~~shall make a copy of the list of names drawn and certify the~~
21 ~~same in his certificate; he shall state the date of the~~
22 ~~order and of the drawing, the number of the names drawn, and~~
23 ~~the time when and the place where the jurors are required to~~
24 ~~appear.~~

25 ~~(5) The certificate and list shall be delivered to the~~

1 ~~sheriff-for-services~~

2 ~~{6}(4)~~ No person may be asked to serve for more than
3 one term during any year unless all the numbers in the jury
4 box have been drawn and there are no other qualified jurors
5 available."

6 Section 5. Section 3-15-505, MCA, is amended to read:

7 "3-15-505. Sheriff Notice to summon jurors. ~~the~~
8 ~~sheriff-as-soon-as-he-receives-a-list-or--lists--of--jurors~~
9 ~~drawn--shall-summon-the-persons-named-therein-to-attend-the~~
10 ~~court-at-the-time-mentioned--in--the--order--by--a--written~~
11 ~~notice-to-that-effect-by-certified-mail-addressed-to-them-to~~
12 ~~the-post-office-address-named-in-the-jury-list-and-deposited~~
13 ~~in--the-post-office-with-the-postage-thereon-prepaid--except~~
14 ~~in-cases-where-the-district-judge--expressly--directs--that~~
15 ~~such-service-shall-be-made-by-giving-personal-notice~~

16 ~~{2}--He--shall--return--the--list--to--the-court-at-the~~
17 ~~opening-of-the-regular-session-thereof-or-at-such-session-or~~
18 ~~time-as-the-jurors-may-be-ordered-to-attend--specifying--the~~
19 ~~names--of--those--who--were-summoned-and-the-manner-in-which~~
20 ~~each-person-was-notified.~~ The clerk shall serve notice by
21 mail on the persons drawn as jurors and require response
22 thereto by mail in such form as the supreme court
23 designates. He may attach to the notice a form for an
24 affidavit claiming exemption, provided for in 3-12-114. If a
25 person fails to respond to the notice, the clerk shall

1 certify the failure to the sheriff, who shall then serve
2 notice personally on such person and require a response to
3 the notice."

4 Section 6. Section 3-15-506, MCA, is amended to read:

5 "3-15-506. Obtaining additional jurors when necessary.

6 (1) Whenever it appears to a district judge that additional
7 jurors will be needed for any term or trial, the judge shall
8 draw as many numbers from the jury box as are necessary to
9 secure the required number of additional jurors. Before
10 drawing the numbers, the judge shall by appropriate order
11 designate the number of jurors needed.

12 (2) When the judge believes that securing the
13 additional jurors from all of the county would cause
14 unnecessary delay or expense, he may order the jurors
15 selected from only a designated portion of the county, which
16 portion shall never be less than the corporate limits of the
17 county seat. If, in the selection of the additional jurors,
18 a number is drawn and the jury list shows the person
19 represented by the number to be a resident of an area
20 outside the area designated by the court order, that number
21 shall be returned to the jury box and a new number drawn.

22 (3) When the required number of names have been
23 selected, the judge may order the prospective jurors
24 notified by telephone or mail by the clerk of the court or
25 ~~he--may--order--them--summoned--by--the--sheriff--either--by~~

LC 0592/01

1 ~~certified-mail-or-by-personal-service."~~

~~-End-~~

STATE OF MONTANA

REQUEST NO. 343-79

FISCAL NOTE

Form BD-15

In compliance with a written request received 02 / 13, 19 79, there is hereby submitted a Fiscal Note for Senate Bill 432 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

Senate Bill 432 is an act to change the method of notifying prospective jurors of duty and their possible attendance at jury trials. The clerk of district court would serve notice by mail on persons drawn as jurors instead of the sheriff doing it by certified mail. A judge may designate his district on a one-trial basis, with the possibility of calling up previously excused persons if the need arises.

ASSUMPTIONS:

- 1) The clerk of district court will not use certified mail to notify persons of jury duty.
- 2) Smaller counties, where jury trials are not a significant part of their judicial operation, would probably not be affected.
- 3) Any savings at the local level is based on the number of jurors being called for the 80-81 biennium remaining approximately the same as FY 79.

LOCAL IMPACT:

- 1) If certified mail is no longer used for notifying jurors, the mailing costs in the larger counties would decrease by as much as 50%.
- 2) The sheriff's office would realize a decrease in its workload, since the clerk would be giving notice to jurors by mail.

COMMENTS:

Savings estimates are based on figures received by Yellowstone County.

Richard L. Truitt
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/16/79

1 *Sen. Hoffmann* BILL NO. *432*
 2 INTRODUCED BY *Hoffmann Boyle Nelson*
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 13 county commissioners, ~~the county treasurer~~ and the county
 14 ~~assessor--or--any two of such officers~~ clerk and recorder of
 15 each county must meet at the county seat of each county at
 16 the office of the county clerk and recorder on the second
 17 Monday of December of each year for the purpose of making a
 18 list of persons to serve as trial jurors for the ensuing
 19 year. If they fail to meet on the day specified in this
 20 section, they must meet as soon thereafter as practicable."

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13 ~~in the post office with the postage thereon prepaid except~~
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LC 0592/01

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INTRODUCED BY HAFFERMAN, BOYLAN, MEHRENS

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(b)(4) No person may be asked to serve for more than one term during any year unless all the numbers in the jury box have been drawn and there are no other qualified jurors available."

Section 5. Section 3-15-505, MCA, is amended to read:

"3-15-505. Sheriff Notice to summon jurors. (1) The sheriff, as soon as he receives a list or lists of jurors drawn, shall summon the persons named therein to attend the court at the time mentioned in the order, by a written notice to that effect by certified mail addressed to them to the post office address named in the jury list and deposited in the post office with the postage thereon prepaid, except in cases where the district judge expressly directs that such service shall be made by giving personal notice.

(2) He shall return the list to the court at the opening of the regular session thereof or at such session or time as the jurors may be ordered to attend, specifying the names of those who were summoned and the manner in which each person was notified. The clerk shall serve notice by mail on the persons drawn as jurors and require response thereto by mail in such form as the supreme court designates. He may attach to the notice a form for an affidavit claiming exemption, provided for in 3-15-314. If a person fails to respond to the notice, the clerk shall

certify the failure to the sheriff, who shall then serve notice personally on such person and require a response to the notice."

Section 6. Section 3-15-506, MCA, is amended to read:

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(1) Whenever it appears to a district judge that additional jurors will be needed for any term or trial, the judge shall draw as many numbers from the jury box as are necessary to secure the required number of additional jurors. Before drawing the numbers, the judge shall by appropriate order designate the number of jurors needed.

(2) When the judge believes that securing the additional jurors from all of the county would cause unnecessary delay or expense, he may order the jurors selected from only a designated portion of the county, which portion shall never be less than the corporate limits of the county seat. If, in the selection of the additional jurors, a number is drawn and the jury list shows the person represented by the number to be a resident of an area outside the area designated by the court order, that number shall be returned to the jury box and a new number drawn.

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SB 0432/02

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-End-

MINUTES OF MEETING
SENATE JUDICIARY COMMITTEE
February 17, 1979

The forty-first meeting of the Senate Judiciary Committee was called to order by Senator Everett R. Lensink in Room 331 of the Capitol building on the above date at 9:32 a.m.

ROLL CALL:

All members were present.

CONSIDERATION OF SENATE BILL 286:

Senator Brown stated that he believes that this is the most important bill of the session. This bill is an act to increase the number of associate justices on the supreme court. He said that the court has had an almost 100 percent increase in the number of cases they try and the opportunity to go to seven justices will ease the work load and will give the court some flexibility.

Chief Justice Frank Haswell passed out some information for the committee and stated that the supreme court has looked over the various alternatives available to handle their increased caseload and found this to be the most feasible method and the least costwise. He said that they would contemplate using the additional justices as sort of spare and that the court would still sit on a five-judge panel, and they would set up procedures for a full seven-man court to sit in cases involving more important views.

J. C. Weingartner, representing the Montana Bar Association, gave a statement in support of this bill. There were no further proponents and no opponents.

Senator Brown stated that he could not overemphasize what the judge says about the expenses as the other three alternatives were much more expensive.

Senator Healy asked if these judges would be appointed by the governor, and Senator Brown answered, yes, from a list of three to five people and he would select from that list.

Senator Turnage moved that the bill do pass.

Senator Towe asked how they envision the work; and on the cases where they used a seven-member panel, who would formulate the rules.

Judge Haswell stated that these rules would be subject to legislative review. It was asked how would you select panel members and Senator Towe stated that it may be random and in San Francisco, they have a rotation basis.

There were no further questions and comments and the vote on the motion to do pass carried unanimously.

CONSIDERATION OF SENATE BILL 431:

Senator Hafferman from Lincoln County gave an explanation of this bill. He introduced Ed Carney, director of the Professional and Occupational Licensing Department.

Mr. Carney gave a statement in support of this bill and he stated that this particular problem gave them problems last summer.

There were no further proponents and no opponents.

Senator Towe asked what kind of licensing were they talking about and Mr. Carney stated that it means all licensing - all that come into our department and all other departments and he stated that we will know if you really want us to take that step.

Senator Brown stated that the point to emphasize is that this does not do away with the notice of a hearing. He said first you get a notice that you are thinking about revoking a license; and then you get a second notice that means now you have an opportunity for a hearing, he gets an opportunity to appear and he can show his compliance with the rules. He stated that we are talking about doing away with an extra notice and it can be taken care of without a hearing.

Senator Turnage asked if he can be put out of business, pending that hearing and Senator Brown said no, he is not - - that it is not effective until a final administrative opinion.

Senator Turnage stated that he wants to help the program but he really doesn't want to put a guy out of business. Senator Towe asked what is the process if this bill passes. Mr. Carney said that you don't get involved without a complaint, both parties are talked to, this report is filed back with the board and the board makes a decision based on the report. If a revocation of a license may be contemplated, a notice of a hearing for revocation of license is issued, we interpret this now to mean you must write to this fellow. He is allowed a hearing in any situation and can continue in business until the hearing.

There were no further questions or comments and Senator Lensink said that we will take this bill under advisement. The hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 432:

Senator Hafferman gave an explanation of this bill, which is an act to revise the law relating to attendance of trial juries in district court. He stated that a lot of people will not register to vote as they do not want to serve on juries.

Robert Holter, District Judge in the 19th Judicial District, stated that he was partially in favor of this bill. He stated that in subsection (3) this change would permit a court to draw more than one jury in one term and he said that a lot of people in Lincoln became professional jurors when they had a murder trial and he stated that he began to sweat because he did not know if the jury was legal. He stated that in subsection (4) this covers "one-day or one-trial" system and this cuts down the amount of jury service per person and makes it much more attractive and that this would be discretionary with the judge.

Under Section 5, Notice to Jurors, he said this would change the system of calling jurors and he stated that there are many different systems used in the state to call juries. He said they could use a letter notice with a jury questionnaire and that most of them answer this questionnaire and this would also serve as an acknowledgement that they had been served and he said that in Texas they have very little opposition to serving on juries using this method.

Maggie Davis, representing the Montana League of Women Voters, stated that they were not too familiar with this bill itself, but she did know that people are refusing in droves to register because of this reason and this is particularly so in Great Falls.

There were no further proponents and no opponents.

Senator Towe moved that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 476:

Senator Van Valkenburg gave an explanation of this bill, which is an act to license and regulate persons who purport to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of either through the use of any device or instrumentation as lie detectors, etc. He stated that he thinks this is necessary because of the increasing use of polygraph in law, in employment, and personal use. He stated that people come in and say they are trained, and they really do not have

sufficient background to be advancing an opinion when they really do not know.

Arnie Sand, a deputy attorney with the Cascade County Sheriffs' Office in Great Falls, stated that he had the highest degree in the northwest; and he told of an individual in Montana, who ordered his instrument out of a catalogue, read some material and calls himself a polygraph examiner and he felt that this type of operation has to be stopped. He also told of another individual who wants to order an instrument, type up some instructions and he will rent this machine to anyone who comes along. He said that at the present time, there are sixteen people who are running polygraphs and they need some help in trying to control this type of individual.

He stated that they belonged to the Montana Association of Polygraphic Operators and we have to be a graduate of an approved school, and they also have to attend a training seminar once a year.

Harry Younker, representing the Advanced Polygraph Service of Helena, stated that they are definitely in need of this bill.

Wendel Froscheim, Missoula, said that it was important to know how to use a polygraph because of the effects it can have on an individual.

There were no further proponents and no opponents.

Senator Healy questioned if there were qualifications needed in order to be accepted to the school. Mr. Sand stated that yes there is - that you must have two years of college, you have to pass an entrance examination plus you have to have a polygraph test yourself. He stated that all the time you are in school you must maintain a certain grade level, if you don't hold it, you are automatically dropped from the course, it is open to both private and the law enforcement industry and the minimum is 200 hours of classroom instruction. Afterwards you have to go out and run 300 examinations and you are checked to be sure you are running them with accuracy.

Senator Healy questioned if there were any of these schools in the northwest and Mr. Sand said, no, they are in California, Denver, Chicago, New York and Georgia.

Senator Towe questioned on page 7, lines 23 and 24 - issuance of license - how they were going to determine that, are you going to ask to see records and he wondered if there was anything that describes the circumstances of a polygraph

test - when it can be used and when it cannot be used. Mr. Sand said there is nothing in the bill, but he said that a person that is being run on a polygraph, must submit to it and this is throughout the United States.

Senator Lensink asked if they were certified and Mr. Sand said, yes, we are, we are certified by the American Polygraph Association and we have to meet their guidelines.

Senator Lensink asked who makes use of the services of the polygraph examiners and Mr. Sand said that the largest use is law enforcement, private companies that are having problems with internal theft are using it, insurance companies use it to find out whether or not claims have been falsified, etc.

Senator Lensink asked what advantages does licensing them have over certifying them. Mr. Sand said that they can control whoever is operating in the state and the way it is right now they can call themselves a polygraph examiner and have absolutely no training.

Senator Lensink wondered who is the loser if the insurance company is dumb enough - is it the insurance company or is it the other people. Mr. Sand said that it can work both ways and he gave an example of a polygraph examiner who was not up to date who had a \$186,000 insurance claim and who read the graphs wrong and the ethics he used in the procedure were all wrong.

Senator Towe said that he was not terribly enthused about polygraphs but he felt that professionalism was important and he would support the bill.

There being no further questions and no comments, the hearing on this bill was closed.

CONSIDERATION OF SENATE BILL 426:

Senator Stimatz gave an explanation of this bill, which is a bill to provide that a criminal offender is considered nondangerous for purposes of parole eligibility unless the sentencing court specifies that the offender is not a nondangerous offender.

Nick Rotering, representing the Department of Institutions, gave a statement in support of this bill, and he said that in 1976 a bill was passed that did just the opposite, and they found that this was not the intent of the district judges and he said that this puts the burden back on the sentencing court.

Tom Honzel, representing the Association of County Attorneys, stated that they would like to make the law consistent and right now it is inconsistent and recommended that they change the "or" to an "and". He said that SB 260 would do away with nondangerous situation and he said that SB 223 was incorporated into SB 228 and this has to be acted on yet.

There were no further proponents and no opponents.

Senator Turnage moved that the bill do pass.

Senator Van Valkenburg stated that a lot of people have affected by this in the last two years and are we going to make sure these people are taken care of it this bill passes. Mr. Rotering explained what they have done to protect these people.

The motion carried unanimously.

CONSIDERATION OF SENATE BILL 468:

Senator Stimatz testified in connection with this bill, which is an act to generally revise the laws relating to courts of limited jurisdiction. He introduced Jim Jensen, representing the Montana Magistrates Association.

Mr. Jensen gave a statement in support of this bill.

Mike Abley, the Administrator for the Supreme Court, stated that they are the primary agency for the training of judges and we have now made arrangements with Mike Greeley to use the training academy which will further reduce the cost and that the costs are very minimal and they have no problem with this bill.

M. Turcott, a justice of peace from Broadwater County, said he has been talking to attorneys that bring up all the things that are being done wrong especially in the lower courts and he said that 90 to 95 per cent of the judges attend these schools but the 5 to 10 per cent that are not attending are the ones that are making the problems.

Maggie Davis, representing the League of Women Voters, stated that they favor supervision of the supreme court, costs for education by the counties and also support on page 4 facilities for the court.

There were no further proponents and no opponents.

Senator Galt moved that the bill do pass.

Senator Van Valkenburg questioned on page 3, line 14, what exactly is insolent behaviour. Mr. Jensen said that this is difficult to define but he certainly has seen it.

Senator Healy questioned how this would affect a handicapped judge such as he has in his district. Senator Stimatz said that this probably would not affect him at all as he is a good judge, he is blind, but this bill would not affect him. He said that in the future they may be able to have facilities available for these people.

Senator Towe questioned why is it we are repealing the small claims court without mentioning it in the title. Mr. Jensen stated that this was not the intent and he explained some problems they have had and they want to work on this. Joan Mayer from the Legislative Council stated that this was in the draft that came down to the council. Senator Towe stated that if you utilize that procedure then the attorneys are not involved and Senator Lensink said that the district court small claims court has not been used.

Senator Towe said that he would make a substitute motion to delete section 11 on the repealers. The motion carried, with Senator Anderson voting no.

Senator Galt moved that the bill do pass as amended. The motion carried unanimously.

CONSIDERATION OF SENATE BILL 516:

This was a Senate Judiciary Committee bill, which is an act to revise the law concerning custody orders, to allow ex parte temporary custody orders, to delete the two-year restriction on seeking modification of a custody order, etc. Senators Turnage and Van Valkenburg explained the changes in this bill.

Senator Lensink asked if they had had a chance for Senator Turnage to go over this bill and Senator Turnage said that he was satisfied with it and he stated that we have locked the hands of district judges when some real and apparent problem exists and they have no temporary resources and that is what the law was for many, many years.

Senator Towe said that the main danger to there being an abuse of this temporary order and it will be an automatic thing.

Senator Turnage moved that the bill do pass. The motion carried unanimously.

CONSIDERATION OF SENATE JOINT RESOLUTION 27:

This is a resolution to urge the Montana Supreme Court to appoint laymen to the Commission on Practice and to require the commission to report biennially to the legislature. This bill was requested by the committee.

Senator Brown moved that this bill do pass. The motion carried unanimously.

RECONSIDERATION OF SENATE BILL 431:

Senator Turnage questioned if they think they will abuse this and Senator Towe said that there is no warning any more. Senator Brown stated that there really is a warning and they will try to work it out without going to a hearing and if there is an abuse, I will come back and put this back in.

Senator Brown moved that this bill do pass. The motion carried.

CONSIDERATION OF SENATE BILL 476:

Senator Turnage moved that this bill do not pass.

Senator Van Valkenburg said that he did not have any great love for polygraphs but that he accepts them as a fact of life and this should really get at and stop the shoddy operators.

Senator Turnage said that there is a law on the books right now, but that law enforcement is exempt.

Senator Turnage said that if you leave it like it is right now, the courts are going to keep them out but if you pass this, you are inviting the courts to bring them in.

Senator Lensink stated that in all states, they are swinging away from licensing to being certified and he objected to it on that basis.

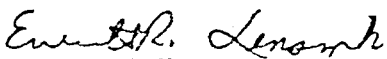
Senator Towe said that he agreed with Fred that they do exist and it is better to have a handle on them.

Senator Turnage said that you will have them in your life everywhere, and he felt that the possession of them should be a felony.

Senator Towe said that an unreliable person can really hurt someone very much and Senator Turnage said that under the present law they have no right to do that.

Senator Turnage moved that they pass consideration on this bill for the day. The motion carried unanimously.

There being no further business, the meeting was adjourned.



SENATOR EVERETT R. LENSINK, Chairman
Senate Judiciary Committee

Date Feb 12

ROLL CALL

JUDICIARY

COMMITTEE

46th LEGISLATIVE SESSION - 1979

NAME	PRESENT	ABSENT	EXCUSED
Lensink, Everett R., Chr. (R)	✓		
Olson, S. A., V. Chr. (R)	✓		
Turnage, Jean A. (R)	✓		
O'Hara, Jesse A. (R)	✓		
Anderson, Mike (R)	✓		
Galt, Jack E. (R)	✓		
Towe, Thomas E. (D)	✓		
Brown, Steve (D)	✓		
Van Valkenburg, Fred (D)	✓		
Healy, John E. (Jack) (D)	✓		

Each Day Attach to Minutes.

(1141)

DATE 2/12/64

Please note bill no.

(check one)
SUPPORT | OPT

[illegible]

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY

833 2 5

MEMORANDUM

TO: State Senate
FROM: Montana Supreme Court
DATE: January 22, 1979
RE: Two Additional Justices

We wish to stress two important factors regarding this important legislation:

1. There is an immediate and compelling need.
2. How a seven-justice court would operate.

1. THERE IS AN IMMEDIATE AND COMPELLING NEED:

(a) In calendar 1978, 517 cases were filed. The Court disposed of 475. On January 3, 1979, there were 364 active cases pending in the court.

(b) Case filings are continuing unabated. In the first fifteen working days of January 1979 (to January 22), 32 cases have been filed.

(c) The five man Court is now working at full capacity. We prepared and issued 269 full opinions in 1978, in addition to dissents, memorandum opinions, orders and dismissals to dispose of 475 cases.

(d) Hearing oral arguments by five justices takes up opinion-writing time, yet oral arguments are essential. Examples:

Between November 14 and November 28, 1978,

we heard oral arguments in 28 cases

Between December 11 and December 21, 1978,

we heard oral arguments in 26 cases

Between January 26 and February 14, 1979,

we will hear oral arguments in 41 cases. During the days we are hearing oral arguments, there is little time to do anything else. We hear four cases per day, except Wednesdays, when our weekly court conference occupies the morning and we hear two cases in the afternoon. Each day after the cases are heard, we discuss each and arrive at tentative conclusions. We then must prepare for the cases on the following day.

(e) We cannot reduce the number of cases for oral argument. We now eliminate oral argument in cases which do not present novel questions or which can be decided simply on the briefs.

(f) Unless we obtain help, it now appears inevitable that an unmanageable backlog will result by the time the next session of the Legislature meets.

(g) We have been unable to promptly and efficiently exercise supervisory and administrative duties for lack of time and personnel. Examples: Modernization, updating and upgrading Supreme Court Rules; procedural and substantive rules of the Board of Bar Examiners; procedural rules of the Commission on Practice; the Judicial Standards Commission and the Sentence Review Division; revision of the Code of Professional Responsibility

for lawyers and the Code of Judicial Ethics for judges; various supervisory of functions over the District Courts and magistrate courts; the five Court Planning Committees; continuing legal education standards for judges; continuing judicial education standards for judges.

2. HOW A SEVEN-JUSTICE COURT WOULD OPERATE:

(a) The 1972 Montana Constitution now provides for the enlargement of the Supreme Court by the Legislature to a seven justice Court, including the Chief Justice. (Article VII, Section 3(1).)

(b) The same constitutional section provides that a majority of the Court must join in written decisions.

(c) The Court plan is to utilize five justice panels for all cases, with four justices necessary to a decision. In constitutional or other far-reaching cases, we would utilize the full seven man Court.

(d) Panels would be selected for each case on a random basis. There are 21 possible combinations of five in a seven justice Court.

3. ADVANTAGES:

(a) Forty percent more judicial capacity on a straight-line basis.

(b) Two justices freed in each case for other opinion writing, routine administrative and other work of the Court.

- (c) Speedier decisions in civil and criminal cases.
- (d) Avoids a stereotyped Court or the impression of the same.
- (e) Greater assurance of high quality legal work.

Frank I. Haswell

Chief Justice Frank I. Haswell
for the Court

SENATE COMMITTEE JUDICIARY

Date 2/ Bill No. 476 Time

NAME	YES	NO
Lensink, Everett R., Chr. (R)	✓	
Olson, S. A., V. Chr. (R)		<i>absent</i>
Turnage, Jean A. (R)	✓	
O'Hara, Jesse A. (R)		✓
Anderson, Mike (R)		<i>absent</i>
Galt, Jack E. (R)	✓	
Towe, Thomas E. (D)		✓
Brown, Steve (D)		
Van Valkenburg, Fred (D)		✓
Healy, John E. (Jack) (D)		✓
		<i>no</i>

Alfred Adams
Secretary

Everett R. Lensink
Chairman

Motion: *Do not pass*

(include enough information on motion--put with yellow copy of committee report.)

STANDING COMMITTEE REPORT

February 17, 19 77

MR. ~~President~~

We, your committee on Judiciary

having had under consideration Senate Joint Resolution Bill No. 27

Respectfully report as follows: That Senate Joint Resolution Bill No. 27

DO PASS

2
H. 6

STANDING COMMITTEE REPORT

.....February 17,..... 19 79.....

MR.President:.....

We, your committee onJudiciary.....

having had under considerationSenate..... Bill No.236.....

Respectfully report as follows: That.....Senate..... Bill No.236.....

DO PASS

STANDING COMMITTEE REPORT

.....February 17,..... 19 79.....

MR.President:.....

We, your committee onJudiciary.....

having had under considerationSenate..... Bill No.426.....

Respectfully report as follows: That.....Senate..... Bill No.426.....

DO PASS

41
A/C

STANDING COMMITTEE REPORT

.....February 17,..... 19 72.....

MR.President:.....

We, your committee onJudiciary.....

having had under considerationSenate..... Bill No. 431.....

Respectfully report as follows: That.....Senate..... Bill No. 431.....

DO PASS

441
J.C.

STANDING COMMITTEE REPORT

.....February 17,..... 19 79.....

MR.President:.....

We, your committee on.....Judiciary.....

having had under considerationSenate..... Bill No. 432.....

Respectfully report as follows: That.....Senate..... Bill No. 432.....

DO PASS

(# 41)

STANDING COMMITTEE REPORT

February 13

19 79

MR. President

We, your committee on Judiciary

having had under consideration Senate Bill No. 463

Respectfully report as follows: That Senate Bill No. 463,
introduced bill, be amended as follows:

1. Title, lines 7 through 11.
Following: "MCA" on line 7
Strike: remainder of line 7 through "MCA" on line 11
2. Page 6, lines 20 through 24.
Strike: section 11 in its entirety
Renumber: subsequent section

And, as so amended,
DO PASS

STANDING COMMITTEE REPORT

.....February 17,..... 19 72.....

MR.President:.....

We, your committee on.....Judiciary.....

having had under considerationSenate..... Bill No.515.....

Respectfully report as follows: That.....Senate..... Bill No.515.....

DO PASS

Handwritten signature and initials.

STANDING COMMITTEE REPORT

February 17, 1979

MR. President:

We, your committee on Judiciary

having had under consideration Senate Bill No. 54

Respectfully report as follows: That Senate introduced bill, be amended as follows:

1. Title, line 6.
Following: "OF"
Insert: "TEMPORARY"
2. Page 1, line 19.
Following: "or"
Insert: "temporary"
3. Page 2, line 1.
Following: "a"
Insert: "temporary"
Following: "by"
Insert: "I"
4. Page 2, lines 1 and 2.
Following: "27-19-305"
Strike: ", MCA"
Insert: "]"
5. Page 2, line 8.
Following: "or"
Insert: "temporary"

x997A99x

6. Page 2, line 13.
Following: "or"
Insert: "temporary"

7. Page 2, line 16.
Following: "or"
Insert: "temporary"

8. Page 3.
Following: line 10
Insert: "Section 3. Codification. If Senate Bill 243 becomes law,
the reference in section 1, subsection (2), of this act to
27-19-305 shall be changed by the code commissioner to a reference
to section 7 of Senate Bill 243."

And, as so amended,
DO PASS

STANDING COMMITTEE REPORT

.....February 17,..... 19 79.....

MR.President:.....

We, your committee onJudiciary.....

having had under considerationSenate..... Bill No.54.....

Respectfully report as follows: That.....Senate..... Bill No.54,.....
introduced bill, be amended as follows:

1. Title, line 6.

Following: "OF"

Insert: "TEMPORARY"

2. Page 1, line 19.

Following: "or"

Insert: "temporary"

3. Page 2, line 1.

Following: "a"

Insert: "temporary"

Following: "by"

Insert: "["

4. Page 2, lines 1 and 2.

Following: "27-19-305"

Strike: ", MCA"

Insert: "]"

XRR:KASX

5. Page 2, line 8.

Following: "or"

Insert: "temporary"

6. Page 2, line 13.

Following: "or"

Insert: "temporary"

7. Page 2, line 16.

Following: "or"

Insert: "temporary"

8. Page 3.

Following: line 10

Insert: "Section 3. Codification. If Senate Bill 243 becomes law, the reference in section 1, subsection (2), of this act to 27-19-305 shall be changed by the code commissioner to a reference to section 4 of Senate Bill 243."

And, as so amended,

DO PASS

P.A.

HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE
March 7th, 1979

The regular meeting of the Judiciary Committee was called to order by Chairman John Scully in room 436 of the Capitol Building at 8:00 a.m. on Wednesday March 7th. All members were present with the exception of Representative Keedy, Holmes and Seifert, all coming in later. Bills scheduled for hearing were Senate Bills 288, 364, 250, 256, 322, 346, 355, 394, 454 and 432.

SENATE BILL NO. 322: Senator Healy. This bill is to protect employers from claims for contribution or indemnity asserted by a third person. He read through the bill, and commented on worthless compensation benefits.

BILL KIRKPATRICK: Champion International. He said that the bill was approved unanimously by the Judiciary Committee in the Senate and on both second and third reading. He submitted written testimony to the committee, copy attached.

TIM REARDON: Division of Workers Compensation. We support the program.

WES BENNETT: Self-Insurers. Mr. Bowles of the Montana Chamber says that small business supports the bill.

SEANTOR HEALY: Many small workers might be put out of business. They would be protected by a bill like this.

There was no discussion and the hearing closed on Senate Bill No. 322.

SENATE BILL NO. 346: Senator Towe. This bill would allow more equal access to the courts by allowing the court to award costs and attorneys fees to people who are successful in a law suit against a governmental entity if the claim is judged to be frivolous or pursued in bad faith. If the state agencies or the political subdivisions, that brought or defended the action, is found by the court to be frivolous or in bad faith then they would be entitled to the costs enumerated. It might be called the equal access to the courts act. He read through the bill, and suggested an amendment on page 4, line 13, following frivolous to insert "or pursued in bad faith". He commented that this would not apply to traffic situations or accidents. He mentioned the reason for the amendment which would be in keeping with the administrative code committee. Discussion about this.

BARRY STEVENSON: National Federation of Independent Businessmen. 79% of our members favor this bill. He presented a copy of written testimony, copy attached.

REPRESENTATIVE SCULLY: You mentioned an administrative code committee bill, what is the status of that bill. He asked this of Senator Towe.

SENATOR TOWE: That line was amended out in order to be put in this bill.

REPRESENTATIVE KEEDY: Discussion about the bill being limited to small business. On line 6, page 4, can you imagine a situation where both sides could be equally at fault. He went into detail on this. Then followed discussion about legitimate arguments, frivolous lawsuits, and gave an example of losing in one part and winning in another part.

There was no other discussion and the hearing closed on Senate Bill No. 346.

SENATE BILL NO. 256: Senator Lensink. This bill would revise the laws relating to state-wide ballot issues. He went through the bill and explained, misleading titles and statements of implication. He mentioned one of the initiatives that had been misleading in that if you wanted to vote a certain way you had to vote opposite of what you wanted. This was on a gambling issue in which you were to vote for lower taxes or against lower taxes when actually it was a gambling issue. He went over the judicial review and what the Attorney General would do under this bill. This is one of the few places that might save some money. This would change it so that only each mailing address would get one of the explanations and it would thus save some money.

MIKE McGRATH: Attorney Generals office. Under the present system the petitions have to go to the Secretary of State, and what we propose to do is at the time of the petition the Secretary of State would prepare the statement of implication. He talked about the initiatives we had last time and that most were self-serving and misleading. We have some amendments. The proposed amendment would require that a person opposing would have to file a petition within 10 days. It would help some of the problems. It says that you cannot turn in a petition more than one year in advance and the reason for that is clear. He gave examples of several issues that had been on the last ballot.

MARGARET DAVIS: League of Women Voters. We support this bill and we also support the provision that makes the voter pamphlet widely available.

LES LOBEL: Montana, Dakota Utilities. I am asking about the 10 day limit. Should it not be a little more flexible. There was discussion about HB 768, Representative Hands bill, and that it would conflict with this bill, and that Mr. Hand said he would withdraw his bill if this one should pass.

Representative Kemmis asked for clarification of the provision as to how the pamphlets would be distributed. Then followed discussion about the new election law.

Representative Eudaily asked Mr. McGrath if subsection 5 on page 14 is existing law and Mr. McGrath, said, yes, it is existing law.

Representative Kemmis again wanted to have the pamphlet situation clarified, as to how they planned to send the pamphlets. After lengthy discussion about this aspect of the bill the hearing closed on Senate Bill No. 256.

SENATE BILL NO. 432: Senator Hafferman. This bill revises the law relating to attendance of trial juries in district court. He went through the bill and discussed the jury lists, the term of service of jurors, and the orders directing them. He talked about people not wanting to register to vote because they did not want to serve on the jury.

MARGARET DAVIS: League of Women Voters. We have noted this problem also, and we support this bill. It is an especial problem in Great Falls, and she went on to elaborate.

JOHN BELL: Montana Sheriffs and Peace Officers. We support this bill. He went on and talked of the cost of mailing by certified mail.

There was no discussion and no questions and the hearing closed on Senate Bill 432.

SJR NO. 27: Senator S. Brown. This is an alternate for Senate Bill 211. I discussed this with Chief Justice Haswell. It would be ok with the Supreme Court. Senate Bill 211 would have set up a 9 member committee. He elaborated on how the requirements would work, as to the report to the Legislature each year and identification of each complaint received, the date of each complaint, and so on.

J. C. WEINGARTNER: State Bar of Montana. There is a problem with the commission on practice, which we are trying to correct. He continued at some length.

REPRESENTATIVE LORY: I notice that you require a report to the Legislature, and Mr. Brown said that subsection 1 makes it clear. It in no way reveals the identity of the lawyer. Mr. Lory commented that he was concerned with the confidentiality. Mr. Brown agreed that he was also. With no further discussion the hearing closed on SJR 27.

SENATE BILL NO. 250:

Senator Turnage. This bill deals with constitutional notice in our statutes.

He explained constructive notice. He went on to talk about documents that might be delayed because of the health and platting requirements. The Clerk and Recorders worked this bill over very thoroughly and they support the bill.

JOHN BELL:

County Clerks and Recorders. There were some mechanical problems initially but

we sat down with staff counsel and its now quite workable. We do support the bill as amended.

REPRESENTATIVE SCULLY:

Questioned line 10, the statement of intent. Then followed discussion about

the new amendment on page 11.

SENATOR TURNAGE:

They can file the interim statement of intent to give constructive notice.

Mr. Scully asked what happens if they don't get the health approval. Discussion about the possible consequences.

Mr. Scully made the comment that you would stick another file in the Clerk and Recorders office of those grantors that just have constructive notice. Mr. Turnage explained some of the problems that had come up in Lake County, and commented that somebody might lose the farm someday.

Representative Keyser asked how much it would cost the counties. No one seemed to know if this would cost more or not.

Representative Scully asked, why not record the buyers intent or interest.

WARD SHANAHAN:

Attorney in Lewis and Clark County. The recording language states "instrument to record buyers interest". Considerable discussion about this and why it had never been used in Lake County.

Senator Turnage stated, I would like to use that idea, and he went on to discuss the existing law as he understood it.

There was no other discussion and the hearing closed on Senate Bill 250.

SENATE BILL NO. 288:

Senator Steve Brown. This bill deals with the merger and corporation law. He read through the bill.

WARD SHANAHAN:

Chairman of the Business Section of the State Bar of Montana. The bill allows the exchange of stock and property to other corporations. We adopted the model business act in 1967. The act itself originally resulted as a research project of the American Bar Foundation in the Committee on Corporate Laws of the Corporation Banking and Business Law Section of the American Bar Association. Continual revision of the Model Business Corporation Act is an ongoing project of the American Bar Foundation. However, when the act was revised in 1969, to take advantage of changes in the Internal Revenue Code the Montana law was not changed. Therefore, the change proposed by this Act would bring the Montana law into line with the model business corporation act as it was revised in 1969. He read a paper on mergers, corporations, partnerships and associations. He then presented a copy of his written testimony to the committee, copy attached.

There was no discussion and the hearing closed on Senate Bill No. 288.

SENATE BILL NO. 364:

Senator Steve Brown. This bill provides for fines and assessments of costs in felony criminal cases allowing community service as a condition of deferred or suspended sentences. Whenever, upon a verdict or a plea of guilty, a person has been found guilty of an offense for which a felony penalty could be imposed, the court may impose a fine in lieu of a sentence of imprisonment. The fine shall be in an amount fixed by the court not to exceed \$50,000. Section 5 states that the money will go to the county general fund and that is a good idea because it would guarantee that the money would go back to the county. The rest of the bill amends the current law.

TOM HONZEL:

County Attorneys. The bill does allow the judge to order a defendant who is convicted to require him to pay normal court costs. He discussed what happened prior to the criminal code in 1973. It think it is appropriate in some cases that the court be allowed to impose a fine. He gave an example of an embezzling case. The Supreme Court said they need specific statutory authority.

MIKE McGRATH:

Attorney Generals Office. We support the bill.

REPRESENTATIVE LORY:

Asked about the fine and how it would be imposed.

Mr. HONZEL:

I guess a person could opt to work off a fine.

REPRESENTATIVE LORY:

Could he be put on a payment deferral that is longer than the sentence. Then followed discussion about this.

REPRESENTATIVE DAILY: This sounds like a prisoner relief bill, where the rich get off and the poor don't. Discussion followed among the members about whether this was so.

MR. HONZEL: I guess that is a possibility that this could be used as a plea bargaining tool but the judge has the discretion to not accept it.

There was no other discussion and the hearing closed on Senate Bill 364.

SENATE BILL NO. 355: Senator Stimatz. This bill provides for a minimum compensation for personal representatives of estates. The bill does two things. On page 1, lines 19 to 21, a personal representative is entitled to compensation. On page 3, it will make it consistent with existing law.

MIKE McGRATH: Attorney Generals office. The purpose of the bill is to insure that small estates will not be probated so that the state gets the amount of money it is entitled to.

After a short discussion the hearing closed on Senate Bill No. 355.

SENATE BILL NO. 394: Senator Stimatz. Basically all this bill does is protect the rights of a youth who is detained for investigation or questioning. This is a companion bill to 454. All 394 does is change its language to be compatible with a change in 454. In 454, on page 1, lines 12 to 22, it was not clear. It makes it necessary so that the rights of a youthful offender are clearly understood. 394 only changes the language on page one. It takes out the existing language and adds language on lines 12 through 16.

TOM HONZEL: County Attorneys. Representative Keyser had a similar bill, House Bill 464. It died in Senate Judiciary. This does the same thing but not as well as 464.

KAREN MIKOTA: Opponent, League of Women Voters. We are not opposed to 394 but we are opposed to 454.

Representative Scully asked, should we be aware of something that caused the killing of House Bill 464. Senator Stimatz answered, I was not aware of the other bill.

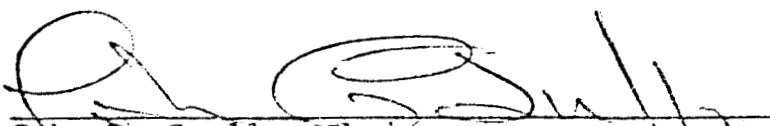
REPRESENTATIVE KEEDY: You may have a bill that changes the language.

REPRESENTATIVE CONROY: I move that we withhold all action on Senate Bills until something is clarified.
The motion carried with the vote unanimous.

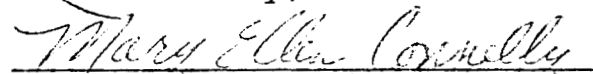
SENATOR STIMATZ: Senate Bill 454 clarifies that a youth may waive the right to counsel unless a petition has been filed under the Montana Youth Court Act. A defendant may waive his right to counsel, except that in all felony cases where the defendant is under 18 years of age, the defendant shall be represented by counsel at every stage of the proceedings following the filing of a petition.

Some discussion followed about the two bills and the waiver of rights.

There was no further business and the meeting adjourned at 11:05 a.m.



John P. Scully, Chairman



Mary Ellen Connelly, Secretary

JUDICIARY COMMITTEE
EXECUTIVE SESSION
March 8, 1979

Following the regular meeting the committee went into executive session to take action on pending bills. The meeting was called to order by Chairman Scully at 9:00 a.m. in room 436 of the Capitol Building on Thursday. All members were present although some did have to leave for other meetings, leaving votes for pending action.

SENATE BILL NO. 322: Representative Keyser moved "be concurred in". The motion carried with the vote unanimous. Representative Daily will carry or else check to see who will.

SENATE BILL NO. 432: Representative Kemmis moved "be concurred in". The motion carried with the Representative Day voting "no". Representative Scully will carry on the floor.

SENATE BILL NO. 288: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Scully will carry on the floor.

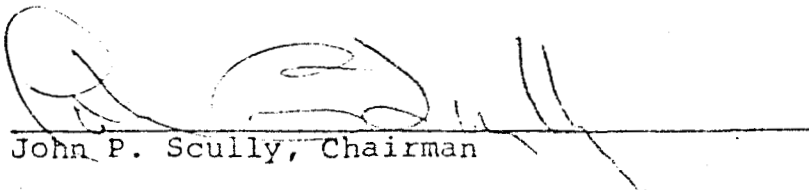
SENATE BILL NO. 367: Representative Lory moved "be concurred in". The motion carried with the vote unanimous. Representative Lory will carry on the floor.

SENATE BILL NO. 488: Representative Kemmis moved to amend on page 2, line 23 and strike subsection (1)(g) in its entirety. The motion carried with the vote unanimous. Representative Day moved "be concurred in as amended". The motion carried with the vote unanimous. Representative Day will carry.

SENATE BILL NO. 88: Representative Scully appointed Representative Keedy to check with Senator Turnage and Mike Meloy about possible amendments. He will report back.

SENATE BILL NO. 217: Representative Lory moved "not concurred in". A straw vote showed that the motion would fail, consequently Representative Keedy presented his amendments to make it a workable bill. After some discussion about the amendments it was agreed to postpone until Representative Keedy could be there because he had to attend a Senate hearing. Before he left he did say that the main changes were on page 2, and new language on subsection 4. Representative Lory asked about where the action should occur. There was some discussion.

The meeting adjourned at 9:55 a.m.



John P. Scully, Chairman